

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 914

Introduced by Assembly Member Gordon

February 22, 2013

An act to amend Section 12586 of, and to add Article 3.5 (commencing with Section 84350) to Chapter 4 of Title 9 of, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 914, as amended, Gordon. Political Reform Act of 1974: campaign disclosures.

(1) The Political Reform Act of 1974 imposes various reporting requirements with regard to contributions and independent expenditures, as defined, made for political purposes. The act establishes the Fair Political Practices Commission as the agency responsible for administering and enforcing the act.

This bill would require the Commission to develop a Nonprofit and Multipurpose Organization Disclosure Statement form. The bill would require that the form provide for the disclosure of specified information relating to contributions, expenditures, and independent expenditures made by, and donations made to, a nonprofit corporation. The bill would require a nonprofit corporation to file a Nonprofit and Multipurpose Organization Disclosure Statement, at a time prescribed by the Commission, in any year in which the nonprofit corporation makes combined contributions, expenditures, and independent expenditures

in this state aggregating \$50,000 or more during the nonprofit corporation's fiscal year.

The bill would require the Commission to make Nonprofit and Multipurpose Organization Disclosure Statements available to the public. The bill would authorize a nonprofit corporation or a donor to the nonprofit corporation to petition the Commission to maintain the confidentiality of information relating to donors and donations. The bill would require the Commission to grant a petition to maintain the confidentiality of donor and donation information if the petitioner establishes by clear and convincing evidence that the public disclosure of donor information will cause undue harm, threats, harassment, or reprisals to the donor, or that the donor did not know or have reason to know that his or her donation would be used to make a contribution, expenditure, or independent expenditure, as specified.

(2) The Supervision of Trustees and Fundraisers for Charitable Purposes Act provides the Attorney General with enforcement and supervisory powers relating to certain entities, including charitable corporations, unincorporated associations, and trustees. Existing law requires these entities to file with the Attorney General periodic written reports, under oath, that set forth information as to the nature of the assets held for charitable purposes and the administration of these assets by the corporation or the trustee in accordance with rules and regulations of the Attorney General. These requirements do not apply to an entity that is a committee for purposes of the Political Reform Act of 1974 that is required to file specified campaign statements pursuant to that act.

This bill would additionally require a charitable corporation, unincorporated association, or trustee that is required to file periodic written reports with the Attorney General to file a Nonprofit and Multipurpose Organization Disclosure Statement as an attachment to its periodic written reports if the entity made combined contributions, expenditures, or independent expenditures in this ~~State~~ *state* aggregating \$50,000 or more during the entity's fiscal year, as specified.

This bill would authorize an entity or its donors to petition the Attorney General to maintain the confidentiality of certain donor information in the same manner described above with respect to similar statements filed with the Commission, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12586 of the Government Code is
2 amended to read:
3 12586. (a) Except as otherwise provided and except corporate
4 trustees that are subject to the jurisdiction of the Commissioner of
5 Financial Institutions of the State of California under Division 1
6 (commencing with Section 99) of the Financial Code or to the
7 Comptroller of the Currency of the United States, every charitable
8 corporation, unincorporated association, and trustee subject to this
9 article shall, in addition to filing copies of the instruments
10 previously required, file with the Attorney General periodic written
11 reports, under oath, setting forth information as to the nature of
12 the assets held for charitable purposes and the administration
13 thereof by the corporation, unincorporated association, or trustee,
14 in accordance with rules and regulations of the Attorney General.
15 (b) The Attorney General shall make rules and regulations as
16 to the time for filing reports, the contents thereof, and the manner
17 of executing and filing them. The Attorney General may classify
18 trusts and other relationships concerning property held for a
19 charitable purpose as to purpose, nature of assets, duration of the
20 trust or other relationship, amount of assets, amounts to be devoted
21 to charitable purposes, nature of trustee, or otherwise, and may
22 establish different rules for the different classes as to time and
23 nature of the reports required to the ends (1) that he or she shall
24 receive reasonably current, periodic reports as to all charitable
25 trusts or other relationships of a similar nature, which will enable
26 him or her to ascertain whether they are being properly
27 administered, and (2) that periodic reports shall not unreasonably
28 add to the expense of the administration of charitable trusts and

1 similar relationships. The Attorney General may suspend the filing
2 of reports as to a particular charitable trust or relationship for a
3 reasonable, specifically designated time upon written application
4 of the trustee filed with the Attorney General and after the Attorney
5 General has filed in the register of charitable trusts a written
6 statement that the interests of the beneficiaries will not be
7 prejudiced thereby and that periodic reports are not required for
8 proper supervision by his or her office.

9 (c) A copy of an account filed by the trustee in any court having
10 jurisdiction of the trust or other relationship, if the account
11 substantially complies with the rules and regulations of the
12 Attorney General, may be filed as a report required by this section.

13 (d) The first periodic written report, unless the filing thereof is
14 suspended as herein provided, shall be filed not later than four
15 months and 15 days following the close of the first calendar or
16 fiscal year in which property is initially received. If any part of
17 the income or principal of a trust previously established is
18 authorized or required to be applied to a charitable purpose at the
19 time this article takes effect, the first report shall be filed at the
20 close of the calendar or fiscal year in which it was registered with
21 the Attorney General or not later than four months and 15 days
22 following the close of the calendar or fiscal period.

23 (e) Every charitable corporation, unincorporated association,
24 and trustee required to file reports with the Attorney General
25 pursuant to this section that receives or accrues in any fiscal year
26 gross revenue of two million dollars (\$2,000,000) or more,
27 exclusive of grants from, and contracts for services with,
28 governmental entities for which the governmental entity requires
29 an accounting of the funds received, shall do all of the following:

30 (1) Prepare annual financial statements using generally accepted
31 accounting principles that are audited by an independent certified
32 public accountant in conformity with generally accepted auditing
33 standards. For any nonaudit services performed by the firm
34 conducting the audit, the firm and its individual auditors shall
35 adhere to the standards for auditor independence set forth in the
36 latest revision of the Government Auditing Standards, issued by
37 the Comptroller General of the United States (the Yellow Book).
38 The Attorney General may, by regulation, prescribe standards for
39 auditor independence in the performance of nonaudit services,
40 including standards different from those set forth in the Yellow

1 Book. If a charitable corporation or unincorporated association
2 that is required to prepare an annual financial statement pursuant
3 to this subdivision is under the control of another organization,
4 the controlling organization may prepare a consolidated financial
5 statement. The audited financial statements shall be available for
6 inspection by the Attorney General and by members of the public
7 no later than nine months after the close of the fiscal year to which
8 the statements relate. A charity shall make its annual audited
9 financial statements available to the public in the same manner
10 that is prescribed for IRS Form 990 by the latest revision of Section
11 6104(d) of the Internal Revenue Code and associated regulations.

12 (2) If it is a corporation, have an audit committee appointed by
13 the board of directors. The audit committee may include persons
14 who are not members of the board of directors, but the member or
15 members of the audit committee shall not include any members
16 of the staff, including the president or chief executive officer and
17 the treasurer or chief financial officer. If the corporation has a
18 finance committee, it must be separate from the audit committee.
19 Members of the finance committee may serve on the audit
20 committee; however, the chairperson of the audit committee may
21 not be a member of the finance committee and members of the
22 finance committee shall constitute less than one-half of the
23 membership of the audit committee. Members of the audit
24 committee shall not receive any compensation from the corporation
25 in excess of the compensation, if any, received by members of the
26 board of directors for service on the board and shall not have a
27 material financial interest in any entity doing business with the
28 corporation. Subject to the supervision of the board of directors,
29 the audit committee shall be responsible for recommending to the
30 board of directors the retention and termination of the independent
31 auditor and may negotiate the independent auditor's compensation
32 on behalf of the board of directors. The audit committee shall
33 confer with the auditor to satisfy its members that the financial
34 affairs of the corporation are in order, shall review and determine
35 whether to accept the audit, shall assure that any nonaudit services
36 performed by the auditing firm conform with standards for auditor
37 independence referred to in paragraph (1), and shall approve
38 performance of nonaudit services by the auditing firm. If the
39 charitable corporation that is required to have an audit committee
40 pursuant to this subdivision is under the control of another

1 corporation, the audit committee may be part of the board of
2 directors of the controlling corporation.

3 (f) If, independent of the audit requirement set forth in paragraph
4 (1) of subdivision (e), a charitable corporation, unincorporated
5 association, or trustee required to file reports with the Attorney
6 General pursuant to this section prepares financial statements that
7 are audited by a certified public accountant, the audited financial
8 statements shall be available for inspection by the Attorney General
9 and shall be made available to members of the public in conformity
10 with paragraph (1) of subdivision (e).

11 (g) The board of directors of a charitable corporation or
12 unincorporated association, or an authorized committee of the
13 board, and the trustee or trustees of a charitable trust shall review
14 and approve the compensation, including benefits, of the president
15 or chief executive officer and the treasurer or chief financial officer
16 to assure that it is just and reasonable. This review and approval
17 shall occur initially upon the hiring of the officer, whenever the
18 term of employment, if any, of the officer is renewed or extended,
19 and whenever the officer's compensation is modified. Separate
20 review and approval shall not be required if a modification of
21 compensation extends to substantially all employees. If a charitable
22 corporation is affiliated with other charitable corporations, the
23 requirements of this section shall be satisfied if review and approval
24 is obtained from the board, or an authorized committee of the
25 board, of the charitable corporation that makes retention and
26 compensation decisions regarding a particular individual.

27 (h) (1) This subdivision applies only to a charitable corporation,
28 unincorporated association, or trustee that is required to file reports
29 with the Attorney General pursuant to this section and that makes
30 combined contributions, expenditures, and independent
31 expenditures in this state aggregating fifty thousand dollars
32 (\$50,000) or more during the entity's fiscal year.

33 (2) The Fair Political Practices Commission shall develop a
34 Nonprofit and Multipurpose Organization Disclosure Statement
35 form that an entity described in paragraph (1) shall file with the
36 Attorney General, as required by this subdivision. The form, which
37 may be identical to the form created for nonprofit corporations
38 pursuant to Section 84350, shall provide for the disclosure of all
39 of the following information:

1 (A) The aggregate combined dollar amount of contributions,
2 expenditures, and independent expenditures that are made during
3 the reporting period.

4 (B) The amount of expenses attributable to contributions,
5 expenditures, and independent expenditures as a percentage of the
6 entity's total expenses that are made during the reporting period.

7 (C) For purposes of an entity for which the combined amounts
8 of contributions, expenditures, and independent expenditures made
9 during the reporting period exceed 10 percent of the entity's total
10 expenses, each of the following with respect to contributions,
11 expenditures, and independent expenditures made during that
12 period:

13 (i) The amount of any funds, or the fair market value of any
14 services or assets, that are provided in relation to a contribution,
15 expenditure, or independent expenditure.

16 (ii) The amount or fair market value of any liabilities incurred
17 in relation to a contribution, expenditure, or independent
18 expenditure.

19 (iii) The date that the funds, services, or assets were provided
20 or the liabilities were incurred.

21 (iv) The name and address of the recipient of the contribution,
22 expenditure, or independent expenditure.

23 (v) A description of the contribution, expenditure, or
24 independent expenditure and its purpose, including whether the
25 contribution, expenditure, or independent expenditure was made
26 in support of or opposition to a candidate, political party, ballot
27 measure, or other question put before the voters in an election.

28 (vi) Information related to each ~~donation received by the donor~~
29 *who made donations in an aggregate amount of ten thousand*
30 *dollars (\$10,000) or more to the entity during the reporting period,*
31 *including the name and address of each* ~~the donor who made~~
32 ~~donations in an aggregate amount of ten thousand dollars (\$10,000)~~
33 ~~or more during the reporting period,~~ the name of the employer of
34 ~~each individual~~ *the donor,* if available, and the date and amount
35 of each donation *from that donor during the reporting period.*

36 (3) (A) Except as otherwise provided in this paragraph, an entity
37 described in paragraph (1) shall file a Nonprofit and Multipurpose
38 Organization Disclosure Statement as an attachment to its periodic
39 written reports required by this section with the Attorney General
40 for any year in which the entity meets the fifty thousand dollar

1 (\$50,000) threshold for combined aggregate contributions,
2 expenditures, and independent expenditures made during a fiscal
3 year. Except as provided in paragraph (4), the Attorney General
4 shall make the filed Nonprofit and Multipurpose Organization
5 Disclosure Statement available to the public through the Register
6 of Charitable Corporations and Trustees established pursuant to
7 Section 12584.

8 (B) An entity is not required to disclose the information
9 described in subparagraph (C) of paragraph (2) if that information
10 has been previously disclosed by the entity in any other campaign
11 statement or report required by the Political Reform Act of 1974
12 (Title 9 (commencing with Section 81000)).

13 (C) If an entity required to file a Nonprofit and Multipurpose
14 Organization Disclosure Statement pursuant to this subdivision
15 maintains one or more segregated bank accounts for the purpose
16 of making election-related contributions, expenditures, or
17 independent expenditures, and those accounts represent the
18 exclusive source of the entity's election-related contributions,
19 expenditures, and independent expenditures in this state, the entity
20 is only required to report information described in clause (vi) of
21 subparagraph (C) of paragraph (2) with respect to donations
22 deposited into the segregated election-related accounts.

23 (4) A charitable corporation, unincorporated association, or
24 trustee that is subject to the reporting requirements of this
25 subdivision, or a donor to any of these entities, may petition the
26 Attorney General, no later than 45 days prior to the date on which
27 the Nonprofit and Multipurpose Organization Disclosure Statement
28 must be filed, to maintain the confidentiality of donor information
29 that is disclosed on the statement. If a petitioner demonstrates by
30 clear and convincing evidence that the public disclosure of donor
31 information reported on the Nonprofit and Multipurpose
32 Organization Disclosure Statement will cause undue harm, threats,
33 harassment, or reprisals to the donor or that the donor did not know
34 or have reason to know that his or her donation would be used to
35 make a contribution, expenditure, or independent expenditure in
36 this state, the Attorney General shall treat the donor and donation
37 information as confidential and shall redact the donor and donation
38 information from any documents that are made available to the
39 public. The Attorney General shall inform the petitioner, in writing,
40 whether the petition to maintain the confidentiality of donor and

1 donation information has been granted or denied. The Attorney
2 General's grant or denial determination shall include a statement
3 of findings and conclusions, and the reasons or basis for the
4 determination.

5 ~~(5) The Attorney General shall immediately provide a copy of~~
6 ~~each filed Nonprofit and Multipurpose Organization Disclosure~~
7 ~~Statement to the Fair Political Practices Commission. A charitable~~
8 ~~corporation, unincorporated association, or trustee that is subject~~
9 ~~to the reporting requirements of this subdivision shall file a copy~~
10 ~~of the Nonprofit and Multipurpose Organization Disclosure~~
11 ~~Statement with the Fair Political Practices Commission at the~~
12 ~~same time that the entity files the statement with the Attorney~~
13 ~~General. However, if a charitable corporation, unincorporated~~
14 ~~association, or trustee that is subject to the reporting requirements~~
15 ~~of this subdivision, or a donor to any of these entities, petitions~~
16 ~~the Attorney General to maintain the confidentiality of donor and~~
17 ~~donation information contained in the statement pursuant to~~
18 ~~paragraph (4), the entity shall not be required to file a copy of the~~
19 ~~Nonprofit and Multipurpose Organization Disclosure Statement~~
20 ~~with the Fair Political Practices Commission until the Attorney~~
21 ~~General has informed the petitioner whether the petition has been~~
22 ~~granted or denied. If the Attorney General has approved a petition~~
23 ~~to maintain the confidentiality of donor and donation information~~
24 ~~disclosed on the Nonprofit and Multipurpose Organization~~
25 ~~Disclosure Statement pursuant to paragraph (4), the Fair Political~~
26 ~~Practices Commission shall also treat that information as~~
27 ~~confidential and shall not make that information publicly available.~~

28 (6) For purposes of this subdivision, the following terms have
29 the following meanings:

30 (A) "Contribution" has the same meaning as set forth in Section
31 82015.

32 (B) "Expenditure" has the same meaning as set forth in Section
33 82025.

34 (C) "Independent expenditure" has the same meaning as set
35 forth in Section 82031.

36 SEC. 2. Article 3.5 (commencing with Section 84350) is added
37 to Chapter 4 of Title 9 of the Government Code, to read:

1 Article 3.5. Nonprofit and Multipurpose Organizations

2
3 84350. (a) This section shall apply only to a nonprofit
4 corporation, as defined in Section 501(c) of the Internal Revenue
5 Code, that is not required to file periodic written reports with the
6 Attorney General under the Supervision of Trustees and
7 Fundraisers for Charitable Purposes Act (Article 7 (commencing
8 with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title
9 2) and that makes combined contributions, expenditures, and
10 independent expenditures in this state aggregating fifty thousand
11 dollars (\$50,000) or more during the nonprofit corporation's fiscal
12 year.

13 (b) The Commission shall develop a Nonprofit and Multipurpose
14 Organization Disclosure Statement form that provides for the
15 disclosure of all of the following information:

16 (1) The aggregate combined dollar amount of contributions,
17 expenditures, and independent expenditures that are made during
18 the reporting period.

19 (2) The amount of expenses attributable to contributions,
20 expenditures, and independent expenditures as a percentage of the
21 nonprofit organization's total expenses that are made during the
22 reporting period.

23 (3) For purposes of a nonprofit organization for which the
24 combined amounts of contributions, expenditures, and independent
25 expenditures made during the reporting period exceed 10 percent
26 of the nonprofit organization's total expenses, each of the following
27 with respect to contributions, expenditures, and independent
28 expenditures made during that period:

29 (A) The amount of any funds, or the fair market value of any
30 services or assets, that are provided in relation to a contribution,
31 expenditure, or independent expenditure.

32 (B) The amount or fair market value of any liabilities incurred
33 in relation to a contribution, expenditure, or independent
34 expenditure.

35 (C) The date that the funds, services, or assets were provided
36 or the liabilities were incurred.

37 (D) The name and address of the recipient of the contribution,
38 expenditure, or independent expenditure.

39 (E) A description of the contribution, expenditure, or
40 independent expenditures and its purpose, including whether the

1 contribution, expenditure, or independent expenditure was made
2 in support of or opposition to a candidate, political party, ballot
3 measure, or other question put before the voters in an election.

4 (F) Information related to each ~~donation received by donor who~~
5 *made donations in an aggregate amount of ten thousand dollars*
6 *(\$10,000) or more* to the nonprofit corporation during the reporting
7 period, including each of the following:

8 (i) The name and address of ~~each the donor who made donations~~
9 ~~in an aggregate amount of ten thousand dollars (\$10,000) or more~~
10 ~~during the reporting period.~~

11 (ii) The name of the employer of ~~each individual~~ *the* donor, if
12 available.

13 (iii) The date and amount of each donation *from that donor*
14 *during the reporting period.*

15 (c) (1) Except as otherwise provided in this subdivision, a
16 nonprofit corporation described in subdivision (a) shall file, at a
17 time to be determined by the Commission, a Nonprofit and
18 Multipurpose Organization Disclosure Statement with the
19 Commission for any year in which the nonprofit corporation meets
20 the fifty thousand dollar (\$50,000) threshold for combined
21 aggregate contributions, expenditures, and independent
22 expenditures made during a fiscal year. Except as provided in
23 subdivision (d), the Commission shall make the filed Nonprofit
24 and Multipurpose Organization Disclosure Statement available to
25 the public, as required by Section 81008.

26 (2) A nonprofit corporation is not required to disclose the
27 information described in paragraph (3) of subdivision (b) if that
28 information has been previously disclosed by the nonprofit
29 corporation in any other campaign statement or report required by
30 this title.

31 (3) If a nonprofit corporation required to file a Nonprofit and
32 Multipurpose Organization Disclosure Statement pursuant to this
33 section maintains one or more segregated bank accounts for the
34 purpose of making election-related contributions, expenditures,
35 or independent expenditures, and those accounts represent the
36 exclusive source of the nonprofit corporation's election-related
37 contributions, expenditures, and independent expenditures in this
38 state, the nonprofit corporation is only required to report
39 information described in subparagraph (F) of paragraph (3) of

1 subdivision (b) with respect to donations deposited into the
2 segregated election-related accounts.

3 (d) A nonprofit corporation or a donor to a nonprofit corporation
4 that is subject to the reporting requirements of this section may
5 petition the Commission, no later than 45 days prior to the date
6 on which the Nonprofit and Multipurpose Organization Disclosure
7 Statement must be filed, to maintain the confidentiality of donor
8 information that is disclosed on the statement. If a petitioner
9 demonstrates by clear and convincing evidence that the public
10 disclosure of donor information reported on the Nonprofit and
11 Multipurpose Organization Disclosure Statement will cause undue
12 harm, threats, harassment, or reprisals to the donor or that the donor
13 did not know or have reason to know that his or her donation would
14 be used to make a contribution, expenditure, or independent
15 expenditure in this state, the Commission shall, notwithstanding
16 Section 81008, treat the donor and donation information as
17 confidential and shall redact the donor and donation information
18 from any documents that are made available to the public. The
19 Commission shall inform the petitioner, in writing, whether the
20 petition to maintain the confidentiality of donor and donation
21 information has been granted or denied. The Commission's grant
22 or denial determination shall include a statement of findings and
23 conclusions, and the reasons or basis for the determination.

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

33 SEC. 4. The Legislature finds and declares that this bill furthers
34 the purposes of the Political Reform Act of 1974 within the
35 meaning of subdivision (a) of Section 81012 of the Government
36 Code.